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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,893	06/18/2001	Christopher B. Hewett	0317	2534

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EXAMINER

BUTLER, MICHAEL E

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/883,893</b>	Applicant(s) <b>Hewitt</b>
Examiner <b>Michael E. Butler</b>	Art Unit <b>3653</b>

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Sep 16, 2002

2a)  This action is **FINAL**. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 21-51 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 21-51 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restriction***

1. Applicant's election of invention II without traverse of the restriction requirement in Paper No. 5 is acknowledged and made final.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 51 is rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Tense of "form" is grammatically inconsistent with the adjoining language of the claims creating ambiguity as to whether applicant has made the dispenser a formed portion of the separating wall or whether applicant is detailing the separator location. "Forms", "formed" or "from" all read grammatically correct and lead to differing claim subject matter.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international

Art Unit: 3653

application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 21-24, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapland et al. which discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (fig2)  
top portion having tissue disposal station having an orifice (top fig 3)  
disposal and dispensing stations separated by a wall (fig 4)  
fastener for fastening dispensing above floor level (inherent in view of bottom fig 3)  
(re: cl 22) disposing orifice is in top portion of dispenser (top fig 3)  
(re: cl 23/24) tissue disposal station overlies the tissue dispenser station (fig 2/3)  
(re: cl 28) body includes a flat support shelf for supporting soap (fig 2)  
(re: cl 29) dispensing station and disposal station enclosed except at orifice (fig 2).

6. Claims 32,33, 36, and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole which discloses:

(re: cl 32) tissue dispensing station an orifice spaced from rear wall 11  
having tissue disposal station having an orifice spaced from rear wall 15  
disposal and dispensing stations separated by a wallBottom 11  
adhesive element for fastening dispensing above floor level (17)  
(re: cl 36)  
(re: cl 33) disposal and dispenser are vertically sited relative each other (13/15 fig 2)  
(re: cl 49,50) wall is part of body (bottom 13 fig 1 & 2).

7. Claims 21-24, 26, 29,36 are rejected under 35 U.S.C. 102(b) as being anticipated by Reif which discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (20)  
top portion having tissue disposal station having an orifice (13/24)  
disposal and dispensing stations separated by a wall (3)  
fastener for fastening dispensing above floor level (2/15)  
(re: cl 22) disposing orifice is in top portion of dispenser (24)  
(re: cl 23/24) tissue disposal station overlies the tissue dispenser station (fig 2 & 3)  
  
(re: cl 36) tissue dispensing station an orifice spaced from rear wall  
having tissue disposal station having an orifice spaced from rear wall 24  
disposal and dispensing stations separated by a wall (3)

Art Unit: 3653

(re: cl 36/26) strap for fastening dispensing above floor level (2)  
(re: cl 33) disposal and dispenser are vertically sited relative each other (13/15 fig 2).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 21-26, 28-30, 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Cole in which the former discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (c3 L 50-57)  
top portion having tissue disposal station having an orifice (29 fig 2)  
disposal and dispensing stations separated by a wall (19)  
(re: cl 22) disposing orifice is in top portion of dispenser (29 fig 2)  
(re: cl 23/24) tissue disposal station overlies the tissue dispenser station (Fig 3)  
(re: cl 28) body includes a flat support shelf for supporting soap (23)  
(re: cl 29) dispensing station and disposal station enclosed except at orifice (fig 2)  
(re: cl 30) body includes an openable door (31)  
(re: cl 32,36) tissue dispensing station an orifice spaced from rear wall (17 fig 1)  
having tissue disposal station having an orifice spaced from rear wall (31 fig 2 and 31 fig 3)  
(re: cl 33) disposal and dispenser are vertically sited relative each other (fig 3)  
(re: cl 34,37,38) (33) disposal overlies dispenser station (29 fig 2)  
(re: cl 35) (34) top and bottom portion, tissue disposing orifice in bottom and facing downward (c3 L 50-57)  
(re: cl 39) body forms a top portion (23).

the latter discloses the elements not inherently disclosed by the former of:  
elongated fastener for suspending dispenser above floor level (18), adhesive element for fastening dispensing above floor level from back(18,17).

It would have been obvious at the time of the invention for Yates to use an adhesive strip attached to the back of the dispenser for suspending the dispenser because

Art Unit: 3653

an adhesive attachment provides flexible detachable mounting options in convenient locations as taught by Cole and come up with the instant invention as claimed.

10. Claims 21-24, 27, and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Glovine, in which the former discloses the elements previously discussed and further discloses:

the latter discloses the elements not inherently disclosed by the former of:  
(re: cl 27) orifice covered by a membrane (24/34).

It would have been obvious at the time of the invention for Shapland et al. to cover the tissue orifices because a membrane protects clean tissues against contaminants, separate dispensing tissues, and retain disposed of tissues as taught by Glovine and come up with the instant invention as claimed.

11. Claims 21-24, 27, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Meyer, Jr. in which the former discloses the elements previously discussed and further discloses:

the latter discloses the elements not inherently disclosed by the former of:  
(re: cl 27) orifice covered by a membrane ( surrounding protruding tissues - fig 4);  
(re: cl 31) tissue cartridge (col. 3 L 1-6).

It would have been obvious at the time of the invention for Shapland et al. to cover the tissue orifices because a membrane protects clean tissues against contaminants, separate dispensing tissues, and retain disposed of tissues as taught by Meyer, Jr. and come up with the instant invention as claimed. It would have been obvious at the time of the invention for Shapland et al. to replenish tissues with a refill cartridge because a a cartridge permits rapid refill and avoids tissue contamination during refill as taught by Meyer, Jr. and come up with the instant invention as claimed.

Art Unit: 3653

12. Claims 21-24, 27, 29-31, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of McPherson, in which the former discloses the elements previously discussed and further discloses:

the latter discloses the elements not inherently disclosed by the former of:

(re: cl 48) separating wall is part of body (30 fig 2).

It would have been obvious at the time of the invention for Shapland et al. to make a separating wall which is part of the body because a body formed wall is durable and eases attachment of the receptacle to common dispenser stations as taught by McPherson and come up with the instant invention as claimed.

13. Claims 21-24, 28-30, 32-35, and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Wilson '085 in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(re: cl 21,32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)

(re: cl 28) a flat shelf (col. 8 L 64-65)

(re: cl 40) mounting the tissue dispenser in a shower stall (c2 L 36-45; fig 11).

It would have been obvious at the time of the invention for Yates to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed. It would have been obvious at the time of the invention for Yates to include a soap shelf shower because a having soap proximate the cleaning tissue aids in grooming as taught by Wilson '085 and come up with the instant invention as claimed.

Art Unit: 3653

14. Claims 32,33, 36, 40, 44 and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Wilson '085 in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(re: cl 32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)  
(re: cl 40) mounting the tissue dispenser in a shower stall (c2 L 36-45; fig 11).

It would have been obvious at the time of the invention for Cole to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed.

15. Claims 40 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harsanyi, Jr. et al. al. in view of Wilson '085 in which the former discloses:

(re: cl 40) A tissue dispenser comprsided of a dispenser station with orifice (20/24 left fig 1)  
a disposal station with orifice (20/24 right fig 1)  
(re: cl 51) a wall which is part of a formed dispenser body separating the sections (fig 2).

The latter discloses the elements not inherently disclosed by the former of:

(re: cl 32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)  
(re: cl 40) mounting the tissue dispenser in a shower stall (c2 L 36-45; fig 11).

It would have been obvious at the time of the invention for Cole to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed.

Art Unit: 3653

16. Claims 21-26, 27-30, 32-34, 36-38, and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Cole, in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

an adhesive strip for suspending the dispenser (18/17).

It would have been obvious at the time of the invention for Shapland et al. to use an adhesive strip attached to the back of the dispenser for suspending the dispenser because an adhesive attachment provides flexible detachable mounting options in convenient locations as taught by Cole and come up with the instant invention as claimed.

### *Conclusion*

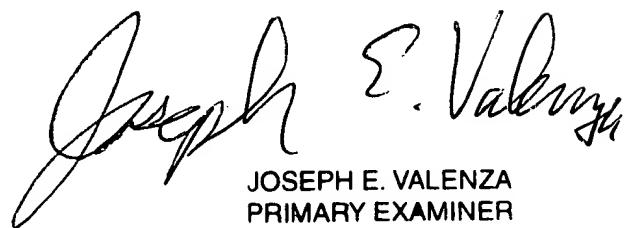
17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (703) 306-4173. The fax number for the Group is (703) 305-7687.

*Michael E. Butler*

Michael E. Butler  
Examiner



*Joseph E. Valenza*

JOSEPH E. VALENZA  
PRIMARY EXAMINER